

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK**

IN RE:	)	Chapter 11
	)	
THE DIOCESE OF ROCHESTER,	)	Case No. 19-20905 (PRW)
	)	
Debtor.	)	
	)	
	)	
THE DIOCESE OF ROCHESTER,	)	Adv. Case No. 2:19-02021 (PRW)
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
THE CONTINENTAL INSURANCE	)	
COMPANY, et al.,	)	
	)	
Defendants.	)	

**OFFICIAL COMMITTEE OF UNSECURED CREDITORS' REPLY TO THE  
MOTION FOR ENTRY OF AN ORDER REFERRING THIS ADVERSARY  
PROCEEDING TO MEDIATION [DOCKET NO. 10]**

The Official Creditors Committee for the Diocese of Rochester (the “Committee”) hereby replies to the *Motion For Entry of An Order Referring This Adversary Proceeding to Mediation* (the “Motion”) (*The Diocese of Rochester v. The Continental Insurance Company, et. al.*, Adv. Proceeding No. 2-19-02021-PRW, Docket no. 10):

1.       The Motion states that the Committee will have input with respect to the selection of a mediator and attend and participate in the contemplated mediation. (Motion at para. 16).
2.       The Committee has diligently considered several mediation candidates and is considering two candidates. The Committee’s candidates are Warren Fitzgerald and the Hon. Diane M. Welsh (retired). The candidates’ on-line qualifications are attached as Exhibits A-1 and A-2. The Committee notes that while neither candidate’s on line qualifications specifically

highlight their experience in mediating sex abuse cases related to the Catholic Church, both candidates have considerable experience mediating such kinds of abuse cases.

3. The state court counsel representing Committee members (“State Court Counsel”) and Committee counsel have interviewed Mr. Fitzgerald. Committee counsel has interviewed Judge Welsh; state court counsel have not yet interviewed Judge Welsh but several of the State Court Counsel have been involved in cases that she mediated. Committee counsel has discussed all of the candidates (including the Debtor’s nominee) with the Committee members but the Committee members have not yet had an opportunity to speak with any of them.

4. The Committee counsel and State Court Counsel have spoken with the Debtor’s candidate.

5. The Committee counsel has discussed all of the mediation candidates with the Debtor. Committee counsel is informed that Debtor’s counsel has spoken with the Committee’s candidates. The Committee does not know if any of the Defendants have spoken with the Committee’s candidates.

6. The Court should allow the Committee members an opportunity to speak with Mr. Fitzgerald, Judge Welsh and the Debtor’s candidate. If the Defendants have not spoken with Mr. Fitzgerald or Judge Welsh, the Committee urges them to do so in order to give due consideration to all qualified candidates.

7. While the Motion contemplated that the Court would appoint a mediator if the parties could not reach agreement, the Motion did not request a deadline for the Court’s appointment of a mediator. The Motion does request a first mediation session by April 1. That date can be accommodated even if the Committee is afforded additional time to speak directly with the candidates.

8. If the parties ultimately cannot agree on the mediator and the Court intends to select a mediator, the Committee requests the opportunity to have a chambers conference with all parties to discuss the candidates.

Date: February 7, 2020

**PACHULSKI STANG ZIEHL & JONES LLP**

/s/ James I. Stang

James I. Stang (admitted *pro hac vice*)

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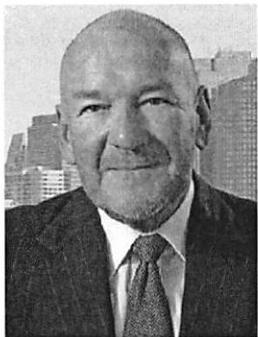
## **EXHIBIT A-1**

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## Warren Fitzgerald

**DIPLOMATE MEMBER**

Fitzgerald Dispute Resolution LLC  
One Constitution Center  
Boston, MA, 02129

Tel: (617) 241-4299  
Fax: (617) 886-0100  
[Website: www.fitzgeraldresolution.com](http://www.fitzgeraldresolution.com)

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Warren Fitzgerald is a full time mediator and conciliator at Fitzgerald Dispute Resolution LLC. He has a wide range of experience settling cases in many areas including product liability, premises liability, fires, explosions, construction site disasters, automobile accidents, business disputes, construction, maritime, labor and employment, trusts and estates, real estate, environmental contamination, insurance coverage, intellectual property, consumer class actions and medical and professional malpractice. He has mediated class action and mass tort cases.

He has more than 30 years experience as a trial lawyer and negotiator representing both plaintiffs and defendants in business, commercial, municipal and personal injury litigation. He was an associate with the firms of Hutchins & Wheeler and Parker, Coulter, Daley & White and was a partner at Meehan, Boyle & Cohen for 22 years. He began mediating cases at the request of fellow trial lawyers in the 1980's and participated in several court supported mediation programs before starting Fitzgerald Dispute Resolution LLC in 2007.



## Case Experience

ADA Disability	Engineering	Premises Liability
Admiralty	Entertainment Sector	Probate
Appellate	Environmental	Product Liability
Arts (Fine/Performing)	Family Businesses	Professional Fees
Automotive	Health Care	Professional Liability
Aviation	Industrial	Professional Malpractice
Banking & Finance	Insurance	Professional Negligence
Business Dissolution	Intellectual Property	Property Damage
Civil Rights	Landlord/Tenant	Railroad & Trucking
Class Actions	Legal Malpractice	Real Estate
Commercial/Business	Local Govt./Municipalities	Sexual Harassment
Community Associations	Medical Devices	Shareholder Disputes
Condominiums	Medical Malpractice	Technology
Construction	Natural Disasters	Title Disputes
Contract Disputes	Non-profit Organizations	Torts
Debt Collections	Nursing Homes	Transportation
Discrimination	Partnerships	Trusts / Estates
Education	Personal Injury	Wage & Hour/FMLA
Employment	Pharmaceuticals	Wrongful Death



## Education

Warren graduated from Boston University, *magna cum laude* with distinction, where he was inducted into Phi Beta Kappa, and Boston University School of Law, where he was an editor of the Law Review.



## Memberships & Affiliations

A past President of the Massachusetts Bar Association and the Massachusetts Academy of Trial Attorneys, Warren has lectured hundreds of times locally and nationally on topics relating to trial practice and ADR for Massachusetts Continuing Legal Education, and numerous law schools and bar associations. He was chair of the MBA ADR committee from 2007 to 2009 and has been a member of the Massachusetts Trial Court Standing Committee on Dispute Resolution since 2007. He also is a member of the American, Boston and Essex County Bar Associations and is an annual sponsor of the Massachusetts Defense Lawyers Association and the Massachusetts Academy of Trial Attorneys.

Warren has been selected as a Massachusetts and a New England "Super Lawyer" each year since publication began and is AV rated by Martindale. He was elected to the American Board of Trial Advocates in 2009.



## Rates Information

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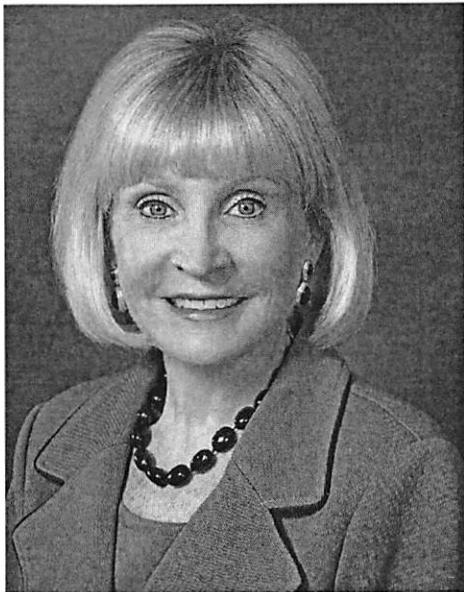
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This member's calendar  
is not available online.  
Please check back later.

If you'd like a list of available  
dates for Warren Fitzgerald, please  
request below.

[Request Dates](#)

## **EXHIBIT A-2**



## Hon. Diane M. Welsh (Ret.)

### Case Manager

Jean Riffe

T: 215-246-9494

F: 215-246-0949

1717 Arch Street, Suite 3810, Philadelphia, PA 19103

[riffe@jamsadr.com](mailto:riffe@jamsadr.com)

## Biography

**Hon. Diane M. Welsh (Ret.)** is highly respected for her ability to successfully resolve disputes with sensitivity, patience, and persistence. Over the past 23 years, as a JAMS neutral and a United States Magistrate Judge, she has successfully resolved over 5000 matters, covering virtually every type of complex dispute. Specifically, Judge Welsh has extraordinary skill in resolving high-stakes multi-party commercial disputes, employment matters, catastrophic personal injury cases, class actions, mass torts and multi-district litigations (MDL's). She was recognized as a 2016-2018 "ADR Champion" by the National Law Journal.

### Class Actions, Mass Torts, and MDLs

Judge Welsh is nationally recognized for her work as a neutral and Special Master in complex class actions, mass torts, and multi-district litigations (MDLs). Select examples of this work include:

- Appointed Special Master of the Amtrak Train Derailment Settlement Program related to the 2015 derailment of a Philadelphia passenger train. The program will distribute \$265m in claims arising from the incident.
- Successful mediation in the multi-district litigation, Wright Medical Technology, Inc. Conserve Hip Implant Products Liability Litigation.
- Mediated a global settlement of the state and federal products liability proceedings brought against Stryker Orthopedics -- In re: HOC Rejuvenate and ABG II Hip Implant Products Liability Litigation, a federal multi-district litigation venued in the United States District Court for the District of Minnesota, and In re: HOC Rejuvenate Hip Stem and ABG II Modular Hip Stem Litigation Case, a New Jersey state multi-county litigation venued in Bergen County, New Jersey. Prior to mediating the global settlement, between 2013 and June 2014, Judge Welsh mediated more than 20 bellwether cases in the New Jersey multi-county litigation. Ninety-five percent of registered eligible patients have enrolled in the settlement program under the master settlement agreement. She currently serves as Claims Administrator overseeing the implementation of the settlement and continues to mediate opt-out cases.
- Appointed Special Master for all proceedings in In re: Constar International Inc. Securities Litigation in the Eastern District of Pennsylvania, Case No. 2:19-cv-02021-PRW, Doc 28, Filed 02/07/20, Entered 02/07/20 20:18:46,

- As a Magistrate Judge, presided over all aspects of discovery in In re: Diet Drugs (Phentermine/Fenfluramine/Defenefuramine) Product Liability Litigation.

## ADR Experience and Qualifications

- Conducted nearly 1,800 settlement conferences as a U.S. Magistrate Judge in virtually every area of civil litigation, including complex commercial, insurance, class action, mass torts, employment, serious personal injury, product liability, professional liability malpractice, antitrust, securities, government, civil rights, environmental, education, aviation, intellectual property, maritime, product liability, real estate, construction, consumer, sports, and entertainment
- Served on the Alternative Dispute Resolution committee for the United States District Court for the Eastern District of Pennsylvania for 10 years, drafting local federal court rules for court-annexed mediation program
- Frequent speaker at Continuing Legal Education programs on settlement negotiation, mediation, and the ADR Act

## Representative Matters

- **Antitrust:** Claims of conspiracy by Internet bond trader against major brokers and dealers; claims of price fixing of blood reagent products; claims of price fixing in the pharmaceutical industry
- **Aviation:** Mediated claims by passengers of Swissair flight 111; accidents involving private planes; plane that crashed into a house resulting in injuries to the resident
- **Civil Rights:** High profile case on behalf of severely abused child against private foster care placement agency and government agencies; claim against school district on behalf of special education student raped by their students in classroom supervised by a substitute teacher; cases involving alleged hazing, harassment and sexual misconduct on a University sports team; multiple Title IX and Tort cases including claims of sexual abuse involving faculty, clergy and students in colleges, universities, primary and secondary schools, boarding schools and foster care
- **Class Actions:** In addition to the class action matters listed above; RICO allegations brought by home buyers alleging specific violations; claims involving federal and state consumer protection statutes against Builder, Mortgage Brokers, Appraiser, and Mortgage Lender; ERISA/Securities Fraud class action by former employees of a national insurance company; multiple wage and hour class actions; unfair, deceptive and bad faith billing for supplying electricity to residential customers; claims involving a defective component part on a water supply line; breach of contract and breach of the covenant of good faith and fair dealing related to pricing practices on electric energy bills; violations of the Telephone Consumer Protection Act; consumer class action in connection with the repossession and resale of financed vehicles; cases involving the Fair Credit Reporting Act and the Fair Debt Collection Practices Act
- **Commercial:** Successfully mediated hundreds of business disputes involving breach of contract, corporate, franchise, licensing, partnership, shareholder's rights, and breach of warranty claims
- **Construction:** Claim by general contractor against regional transportation authority totaling more than \$20 million dollars of cost overruns due to post contract federal requirements regarding lead paint abatement
- **Employment:** Successfully mediated thousands of claims of discrimination (age, disability, gender, national origin); hostile work environment; retaliation; wage & hour; FLSA, ADA; FMLA, state statutes, whistleblower/False Claims Act; harassment; denial of long-term disability insurance; employment contract; denial of employment due to criminal background checks issued under the FCRA
- **Environmental:** Claims by the USA and state against more than twenty defendants in major environmental Superfund case
- **Estates/Probate/Trusts:** breach of fiduciary duty by placing trust assets in underperforming proprietary funds
- **Insurance:** Mediated claims of bad faith, coverage, property damage, reinsurance, and subrogation; coverage disputes over damages sustained by commercial properties in the wake of Superstorm Sandy.
- **International:** dispute between two Mexican agribusinesses who claimed breach of warranty against the manufacturers of an anti-viral vaccine
- **Maritime/Admiralty:** multiple Jones Act cases; disputes between ship owners and insurers over cause of loss-mechanical failure or human error
- **Personal Injury:** Successfully mediated cases involving complex catastrophic personal injury and wrongful death, workplace injuries, nursing home negligence, product liability (including multiple defective medical device claims), motor vehicle, toxic torts, municipal and governmental tort liability, Dram shop/liquor liability, and premises liability
- **Professional Liability:** Mediated numerous cases involving legal malpractice, fee disputes, medical malpractice, chiropractic malpractice, accounting, executives, directors, and officers
- **Real Estate:** Partnership, joint venture, and contract disputes in major real estate development projects; disputes over real estate commissions; violation of franchise agreements

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- **Securities:** Numerous individual and class actions involving claims of fraud; cases alleging breach of fiduciary duty by financial advisors and brokers; anticompetitive acts and practices as a part of an overall scheme to improperly maintain and extend monopoly power in the making for a pharmaceutical drug, causing the payment of overcharges
- **Sexual Abuse:** Successfully mediated settlements in numerous cases involving highly sensitive claims of sexual and physical abuse concerning adult and minor children and group/class action plaintiffs. Disputes included matters involving: alleged abuse at a prestigious boarding school; sex abuse leading to suicide of a college student; allegations of sexually charged hazing and misconduct in connection with university-sponsored sports teams; numerous cases involving sexual abuse claims against Archdioceses, Catholic and other religious schools, and nonsectarian private and public schools; disputes involving victims of incest and church officials; and matters regarding sex trafficking allegations against a major hotel chain
- **Sports/Entertainment:** Copyright and royalty claims by songwriters and artists against record producers and distributors; contract and breach of fiduciary duty claim by heavyweight boxing champion against a promoter; employment discrimination and contract claims by various employees against professional sports teams; personal injury claims brought by professional football players against NFL teams

## Honors, Memberships, and Professional Activities

- Listed as a "Recognized Practitioner," *Chambers USA*, 2019
- Recognized as an "ADR Champion", *National Law Journal*, 2016-2018
- Voted "BEST ADR INDIVIDUAL" by the readers of *ALM's Legal Intelligencer*, Best of 2007-2016
- Recognized as Mediation "Lawyer of the Year", Philadelphia, *Best Lawyers in America*, 2014
- Recognized as a Best Lawyer, Alternative Dispute Resolution Category, *Best Lawyers in America*, 2007-2020
- Recognized as a Pennsylvania Super Lawyer, Alternative Dispute Resolution Category, *Law & Politics Magazine*, 2008-2009
- Voted "Best Individual Mediator", *National Law Journal*, "Best Of" Survey, 2012
- Board of Directors, Girl Scouts of Eastern Pennsylvania
- Member, Federal Magistrate Judges Association; Third Circuit Director, 1999-2004
- Member, The Forum of Executive Women
- Member, American Inns of Court; President, Temple American Inn of Court, 2002-2003
- Member, National Association of Woman Judges, Federal Bar Association, Montgomery Bar Association, Philadelphia Bar Association,
- Bucks County Bar Association, Pennsylvania Bar Association, and other professional organizations
- Member of Third Circuit and U.S. District Court for the Eastern District of Pennsylvania court committees, including Federal-State
- Judicial Council, Committee on Bankruptcy and Magistrate Judges, Alternative Dispute Resolution Committee, Court Interpreters
- Committee, Bench Bar Public Relations and Educational Programs Committee, and Congressional Delegation Committee

## Background and Education

- U.S. Magistrate Judge, U.S. District Court for the Eastern District of PA, 1994-2005
- Private Law Practice, 1984-1994
- Deputy District Attorney, Bucks County District Attorney's Office, 1981-1984
- Legal Counsel, Pennsylvania Senate Judiciary Committee, 1980-1981
- J.D., Villanova University School of Law, 1979
- B.A., Political Science, *Magna Cum Laude*, La Salle University, 1976

## Counsel Comments

- "She is a superb settler of cases. She is tenacious, persistent and imaginative."

- *Almanac of the Federal Judiciary*  
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- “In complicated civil cases, she is very impressive.”
- Almanac of the Federal Judiciary
- “Very few judges could settle the cases she can settle because they don’t take the time to understand them.”
- Almanac of the Federal Judiciary
- “She is balanced. She goes out of her way to demonstrate to each party that she is not biased toward either party.”
- Almanac of the Federal Judiciary

## News

- September 5, 2019  
**JAMS Rated “Top ADR Provider” in The Legal Intelligencer’s Survey for 10th Consecutive Year**  
<https://www.jamsadr.com//news/2019/jams-rated-top-adr-provider-in-the-legal-intelligencers-survey-for-10th-consecutive-year>
- August 19, 2019  
**Five JAMS Panelists Named “Lawyers of the Year” and 59 JAMS Panelists Recognized As “Best Lawyers in America” by Best Lawyers®**  
<https://www.jamsadr.com//news/2019/five-jams-panelists-named-lawyers-of-the-year-and-59-jams-panelists-recognized-as-best-lawyers-in-america-by-best-lawyers>
- May 2, 2019  
**Record Number of JAMS Neutrals Ranked in Chambers USA 2019**  
<https://www.jamsadr.com//news/2019/record-number-of-jams-neutrals-ranked-in-chambers-usa-2019>
- August 15, 2018  
**Two JAMS Panelists Named Best Lawyers’ “Lawyers of the Year;” 57 JAMS Panelists Recognized as 2019 Best Lawyers in America**  
<https://www.jamsadr.com//news/2018/two-jams-panelists-named-best-lawyers-lawyers-of-the-year-57-jams-panelists-recognized-as-2019-best-lawyers-in-america>
- August 7, 2018  
**JAMS Rated “Top ADR Provider” Nine Consecutive Years in Legal Intelligencer Survey**  
<https://www.jamsadr.com//news/2018/jams-rated-top-adr-provider-nine-consecutive-years-in-legal-intelligencer-survey>
- June 1, 2018  
**Fifteen JAMS Panelists Named 2018 ADR Champions by National Law Journal**  
<https://www.jamsadr.com//news/2018/fifteen-jams-panelists-named-2018-adr-champions-by-national-law-journal>
- May 22, 2018  
**JAMS Neutral Hon. Diane M. Welsh (Ret.) Successfully Mediates Starbucks Settlement**  
<https://www.jamsadr.com//news/2018/jams-neutral-hon.-diane-m.-welsh-ret-successfully-mediates-starbucks-settlement>
- October 17, 2017  
**JAMS Wins “Top ADR Provider” Eight Years in a Row in Legal Intelligencer Survey**  
<https://www.jamsadr.com//news/2017/jams-wins-top-adr-provider-eight-years-in-a-row-in-legal-intelligencer-survey>
- August 16, 2017  
**Eight JAMS Panelists Named Best Lawyers’ “Lawyers of the Year;” 53 JAMS Panelists Recognized as 2018 Best Lawyers in America**  
<https://www.jamsadr.com//news/2017/eight-jams-panelists-named-best-lawyers-lawyers-of-the-year-53-jams-panelists-recognized-as-2018-best-lawyers-in-america>
- January 17, 2017  
**JAMS Panelist Hon. Diane Welsh (Ret.) Appointed Master in Amtrak Allocation**  
<https://www.jamsadr.com//news/2017/jams-panelist-hon.-diane-welsh-ret-appointed-master-in-amtrak-allocation>

## Events

- October 7, 2019

### **Beyond Mediation and Arbitration Basics: Neutral Analysis and the Use of Special Masters and Discovery Referees**

Philadelphia, PA, USA

<https://www.jamsadr.com//events/2019/beyond-mediation-and-arbitration-basics-neutral-analysis-and-the-use-of-special-masters-and-discovery-referees>

## Publications

- June 2018

### **2018 ADR Champions Profile: Diane Welsh**

The National Law Journal

<https://www.jamsadr.com//files/uploads/documents/neutrals/welsh-nationallawjournal-adr-champions-profile-2018-06.pdf>

- **2018 National Law Journal Alternative Dispute Resolution ADR Champions List**

The National Law Journal

<https://www.jamsadr.com//files/uploads/documents/2018-national-law-journal-adr-champions.pdf>

## Practice Areas

- Antitrust
- Arbitration
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- Construction Defect
- Education/Schools
- Employment
- Entertainment and Sports
- Environmental
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- Insurance
- Intellectual Property
- Maritime/Admiralty
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## Locations

- Philadelphia, Pennsylvania
- New York, New York

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